



COUNTY OF SAN BERNARDINO POLICY MANUAL

No. 2-14

ISSUE

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By

EFFECTIVE

SUBJECT

CANCELLATION OF PROPERTY TAXES, PENALTIES AND COSTS WHEN PROPERTY HAS BEEN DEEDED TO OR FORECLOSED UPON BY A CITY OR OTHER GOVERNMENTAL ENTITY (REVENUE AND TAXATION CODE SECTION 4986.3)

APPROVED

DENNIS HANSBERGER
CHAIRMAN, BOARD OF SUPERVISORS

PURPOSE

The purpose of this Policy is to provide the guidelines and procedural framework for the cancellation of property taxes, penalties and costs when real property has been deeded to or foreclosed upon by a city or other governmental entity pursuant to certain statutory provisions. This policy does not affect, modify or otherwise limit the exercise of other discretionary authority vested in the Auditor/Controller-Recorder and the Treasurer-Tax Collector by statute.

BACKGROUND

The California Property Tax System

Property taxes become a lien against the property taxed on the first day of January preceding the tax year (July 1-June 30) for which the taxes are due (Rev. & Tax. § 2192). Taxes imposed and secured by real property are entitled to superior priority against all other liens, encumbrances or charges (Rev. & Tax. § 2192.1) and the penalties and costs imposed for default in the payment of such taxes must be paid to redeem such property from tax defaulted status (Rev. & Tax. § 4102).

The assessment of the ad valorem taxable value of all locally assessable taxable property is enrolled by the Assessor on or before July 1 of the tax year (Rev. & Tax. §§ 601-616). The assessment of all property within the assessment jurisdiction of the State is performed by the California State Board of Equalization and the determined taxable value of such state assessed property is provided to the County Auditor on or before July 31 of the tax year (Rev. & Tax. § 756).

The Auditor is charged with responsibility to enter the assessed value of locally assessed property on the tax roll (Rev. & Tax. § 1646), to calculate the amount of taxes and assessments due on each tax parcel (Rev. & Tax. § 2152), and to transmit this tax roll information to the Treasurer-Tax Collector for preparation and issuance of tax bills (Rev. & Tax. §§ 2601 and 2909.1).

The Treasurer-Tax Collector is required to issue and mail (or electronically transmit) tax bills for taxes on unsecured property to the property owners of record at their address of record by July 31, with the taxes so assessed last payable without delinquency on August 31. Any taxes added to the unsecured roll after July 31 are last payable without delinquency on the last day of the month following the month succeeding the month of enrollment (Rev. & Tax. § 2922).

Secured taxes are payable in two installments, with the first installment last payable, without penalty, on December 10 and the second installment, last payable without penalty, on April 10 of the tax year for which the taxes are assessed (Rev. & Tax. §§ 2617; 2700 et seq.). Upon collection of property taxes by the Treasurer-Tax Collector, the Auditor/Controller-Recorder distributes the tax revenues to all taxing agencies, both Teeter and non-Teeter participants. Teeter participants receive their allocation of current secured taxes regardless of collection by the Treasurer-Tax Collector, while non-Teeter participants only receive their allocation of current

secured taxes actually collected by the Treasurer-Tax Collector.

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Property Tax Penalties

Property taxes not timely paid are subject to a delinquency penalty equal to 10% of the amount of the property tax due plus costs and penalties accruing at the rate of 1.5% per month after the taxes are declared to be in default (Rev. & Tax. §§ 2617, 2618, 2621 and 4103).

The property taxed is subject to a declaration of tax default of the property if either or both of the installments remain unpaid by June 30 of the year for which the taxes are due (Rev. & Tax. §§ 3436-3437).

Once property subject to the secured taxes is deemed defaulted, the property becomes subject to sale five years after the date of default for satisfaction of the taxes due unless redeemed by the payment of redemption penalties plus statutory costs. (Rev. & Tax. §§ 4102-4103).

Property subject to defaulted unsecured taxes may be subject to seizure and sale for the taxes due or may be subject to the recording of a judgment lien secured by all real property in the county for the unpaid taxes and penalties due or may be subject to the entry of a summary judgment for the amount of defaulted taxes (Rev. & Tax. §§ 2191.6 et seq.; 2760 et seq. and 3101 et seq.)

Cancellation of Property Taxes When Property Deeded to or Foreclosed Upon by a City or Other Governmental Entity

If a city or other governmental entity forecloses upon real property for default in 1915 Bond Act assessments or for default in the payment of special taxes levied under the Mello-Roos Community Facilities Act of 1982 (Gov't Code § 53311 et seq.) and the property is also subject to any uncollected county property taxes, tax penalties and/or costs, the foreclosing governmental entity may seek tax relief from a county if such relief is necessary to allow the sale or other economic use of the property. A county may grant such tax penalty relief if the foreclosing entity presents satisfactory proof that it is necessary to cancel all or some portion of such taxes, penalties or costs to allow a liquidation sale to third parties or other economic use of the property (Rev. & Tax. § 4986.3).

POLICY AMPLIFICATION

GUIDELINES

1. In order to return properties that are subject to defaulted county property taxes and penalties and have been foreclosed upon by a governmental entity as a result of 1915 Bond Act assessments or defaults in Mello-Roos special tax payments to the active tax roll, a governmental entity may seek and a county may grant relief from part or, in compelling circumstances, all of the existing property tax liens, penalties and costs. A county may but is not required to grant relief under the provisions of Rev. & Tax. § 4986.3. It is the policy of the County to consider the cancellation of the penalties and costs upon a showing of good cause. In addition, the County will consider the cancellation of all or any portion of the defaulted taxes upon the demonstration of the existence of compelling circumstances.
2. All applications for relief submitted by governmental entities under this section must clearly and convincingly establish to the satisfaction of the County that the foreclosed upon property cannot be put to reasonable economic use unless part or all of the outstanding penalties, costs or underlying taxes due to the County are cancelled. The governmental entity (hereafter "Applicant") must show

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<p>that the foreclosed property will not and cannot be sold at a value sufficient to retire all obligations and debt on the property unless the County grants relief. In addition, it must be clearly and convincingly demonstrated to the County that compelling circumstances exist to cancel the underlying taxes.</p> <p>Any relief from payment of defaulted county taxes under this policy requires that the Applicant entity (1) return <u>all</u> Teeter Fund payments previously made by the County to any Teeter participants for the taxes billed in the defaulted tax years and (2) agree to reduce the delinquent special taxes, bond assessments, penalties and costs to be ultimately recovered by the bondholders through the sale of the property <u>by at least</u> the same amount that the Applicant asks the county to cancel or waive under <u>Rev. & Tax. § 4986.3</u>.</p> <p>County penalties, costs or the underlying taxes will not be cancelled or waived in order to make the city or other governmental entity Applicants “whole” to the disproportionate or unreasonable financial detriment of the County. The Applicant (and the bondholders) must be ready to surrender their financial claims against the property <u>at least</u> by the same amount as the County is asked to waive its tax penalties, costs and/or taxes.</p> <p>Applicant must agree to indemnify, defend and hold harmless the County and its authorized officers, employees, agents and volunteers from any and all claims or actions arising out of County’s acts, errors or omissions relating to the waiver or cancellation of all or any portion of taxes, penalties or costs and for any costs or expenses incurred by the County on account of any claim or action therefore.</p> <p><u>PROCEDURES</u></p> <ol style="list-style-type: none"> 1. If an Applicant seeks relief in the form of the full or partial cancellation of delinquent or defaulted tax penalties, collection costs and/or defaulted taxes subsequent to Applicant’s foreclosure upon real property for the default of 1915 Act bond assessments or Mello-Roos special taxes, Applicant must submit a written application for relief under <u>Rev. & Tax. § 4986.3</u>. 2. Applicant shall submit a written application for relief in a form satisfactory to the County containing each of the following: <ol style="list-style-type: none"> (a) Name, address, telephone number(s), fax number, e-mail address and responsible officer/contact person(s) for the Applicant; (b) The real properties for which the relief is sought (identified by street address, County of San Bernardino Assessor’s Parcel Number [“San Bernardino APN”] and legal description); (c) The amount (by San Bernardino APN) of the current, delinquent or defaulted property taxes, special assessments, penalties and costs due on each parcel as of the date of application and the names and mailing addresses of all county governmental agencies that receive a share of the general taxes, special taxes and assessments on the parcels;¹ 	
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¹ This information may be obtained from the Treasurer-Tax Collector and the Auditor/Controller-Recorder

- (d) The date on which the Applicant foreclosed upon or otherwise obtained title to the tax defaulted parcel(s) or on which the Applicant proposes to obtain title to the tax-defaulted properties, together with a copy of the judgment of foreclosure, the order for judicial sale or the deed in lieu of foreclosure for each of the parcels subject to the Applicant's request for relief;
- (e) The amount of defaulted bond assessments or Mello-Roos special taxes, penalties and costs due on each parcel subject to Applicant's request as of the date of foreclosure;
- (f) The current amount of bond assessments (and total bonded indebtedness) or special taxes outstanding on each of the parcels;
- (g) A written, current (no more than 90 days old) unconditional "fair market value" appraisal of each of the parcels (at the current or probable "highest and best use") prepared by an independent appraiser licensed by the California Office of Real Estate Appraisers (Bus. & Prof. § 11301 et seq.), pre-approved by the County. The appraisal must be prepared in accordance with the then approved Uniform Standards of Appraisal Practice issued by the Appraisal Standards Board of the Appraisal Foundation. The cost of the appraisal shall be borne by Applicant. The County reserves the right to reject any submitted appraisal and require that a new appraisal be submitted in accordance with this provision;
- (h) The amounts of all Teeter Fund Payments made by the County to any Teeter participants in anticipation of the payment of the delinquent or defaulted taxes on each of the parcels and the Applicant's plans (if any) to repay the County for those Teeter Funds. This information may be obtained from the Property Tax Division of the Auditor/Controller-Recorder's office,
- (i) A narrative description containing a brief background description of the transaction giving rise to the creation of and purposes for the 1915 Bond Act or Mello-Roos debt for which the tax penalty relief is requested. The Applicant must outline the factual need and economic justification for the tax penalty relief sought. The Applicant must also describe, in detail, the nature and extent of the monetary relief sought from the County and the date on which the balance of the outstanding defaulted property taxes will be paid (if the requested relief were to be granted). In addition, Applicant should provide copies of any agreements for the use of the properties for which relief is sought.
- (j) The Applicant must cause to be removed, by a requesting letter to the Auditor/Controller-Recorder, all of Applicant's special assessments or special taxes related to the application.
- (k) Applicant must include a statement that it agrees to indemnify, defend and hold harmless the County and its authorized officers, employees, agents and volunteers from any and all claims or actions arising out of County's acts, errors or omissions relating to the waiver or cancellation of all or any portion of taxes, penalties or costs and for any costs or expenses incurred by the County on

account of any claim of action therefore.

- (l) The Committee (as described below) will recover the actual costs and expenses of the County officers and staff expended in considering and processing any request for relief under Rev. & Tax. Code § 4986.3. To this end, all applications for relief are to be accompanied by a processing fee. All costs to the County associated with the proceedings are to be advanced by the Applicant.

The Applicant shall submit an initial deposit in an amount of not less than five thousand dollars (\$5,000) with the completed application. The deposit shall be placed in a trust account held by the County. All costs expended by the County for staff time or other County resources expended during the review process are to be paid from this account.

If, in the judgment of the Committee and the involved departments, the costs incurred or projected will cause the balance in this account to fall below two thousand dollars (\$2,000), the Committee shall request the Applicant to advance monies sufficient to bring the account to a balance that is projected to meet remaining costs required to complete the review process. Failure to advance the requested monies on a written demand by the County will result in all processing of the application to cease and may (in the discretion of the Committee) cause the request to be denied.

- (m). Completed applications shall be submitted, together with the deposit of costs to:

County Administrative Officer
County Government Center
385 North Arrowhead Avenue, 5th Floor
San Bernardino, CA 92415-0120

3. Any completed application for relief under Rev. & Tax. § 4986.3 will be considered within 90 days of submission of a complete application. The Applicant will receive a written decision within that time granting all or part of the requested relief or denying the relief.
4. The Applicant's submission shall be considered by a three (3) person committee ("committee") composed of:
 - (a) The Auditor/Controller-Recorder (or his or her designee);
 - (b) The Treasurer-Tax Collector (or his or her designee); and
 - (c). The County Administrative Officer (or his or her designee).

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<p>This Committee shall receive legal advice from the County Counsel² (or his or he designee), who shall attend all Committee meetings. In addition, the Committee may require the participation and assistance of other County Department representatives to review the application.</p> <p>The Committee will be subject to the requirements of the Ralph M. Brown Act. (Gov't Code Section 54950 <u>et seq.</u>). The members of the Committee may select a rotating chair to calendar and notice meetings. The Committee may designate one member (or its legal advisor) to prepare written recommendations on applications for relief. The Committee shall act based on the written submission of the Applicant and such other information, whether oral or written evidence, that the Committee may request the Applicant to present.</p> <ol style="list-style-type: none"> 5. The Applicant may appear at the Committee Meeting at which its application is considered. The Applicant may present such additional written or oral information in support of its request that it believes to be relevant or material or that has been requested by the County. 6. The Committee shall review the application to determine whether the Applicant has presented "satisfactory proof" of good cause and economic need for relief to be granted so as to permit the Applicant to satisfy (or partially satisfy) any unpaid property taxes, assessments, special taxes, penalties, costs and secured governmental debt. The Committee will make a recommendation to the Board of Supervisors on whether full or partial relief should be granted to the Applicant. 7. The Committee shall notify the Applicant in writing of its recommendation to the Board of Supervisors. An agenda item shall be prepared and submitted by the County Administrative Office to the Board of Supervisors. Approval of the agenda item by the County Counsel shall constitute the written consent by the County Counsel required by <u>Rev. and Tax. Code</u> § 4986.3. The Board of Supervisors is the ultimate decision-making authority, and may approve, deny, or modify the Committee's recommendation. The Board may also direct that an agreement be entered into between the County and Applicant to include the terms or conditions related to the granting of tax relief. 	

² Rev. and Tax Code § 4986.3 states that all or any portion of any uncollected tax, penalty or costs may on satisfactory proof be canceled by the auditor on order of the board of supervisors with the written consent of the district attorney. Revenue and Taxation Code section 4802 defines "district attorney" as the "civil legal advisor of the board of supervisors." In the county of San Bernardino, the civil legal advisor of the board of supervisors is the County Counsel. As a result, any written consent would be provided by the County Counsel rather than the District Attorney.

